

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 31955

COBI STRAUB,)	
)	2006 Opinion No. 53
Plaintiff-Respondent,)	
)	Filed: July 18, 2006
v.)	
)	Stephen W. Kenyon, Clerk
DONALD R. SMITH and LESLIE SMITH,)	
husband and wife,)	
)	
Defendants-Appellants.)	
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order denying motion to reconsider dismissal, reversed and remanded.

John Patrick Whelan, Coeur d'Alene, for appellants.

Beck & Poorman, LLC, Hayden, for respondent.

PERRY, Chief Judge

Donald R. Smith and Leslie Smith appeal from the district court's order denying their motion for reconsideration of dismissal. For the reasons set forth below, we reverse and remand for further proceedings.

I.

FACTS AND PROCEDURE

Cobi Straub purchased commercial rental property from the Smiths. Straub later filed a complaint alleging misrepresentation. The Smiths filed a pro se answer denying the allegations. Straub filed a motion to amend her complaint, which the Smiths opposed. The motion was granted by the district court, and Straub amended her complaint to the extent she included a request for punitive damages in the prayer for relief. The district court ordered the Smiths to answer the amended complaint and, even though they had retained counsel at that time, no answer was filed in response.

One month prior to trial, Straub moved for an order of mediation. Mediation occurred and was unfruitful. Straub thereafter decided to abandon her action and, six days prior to trial, she sought a stipulation from the Smiths to dismiss the case with prejudice. Straub concurrently filed a motion to dismiss and proposed order with the district court. Straub did not provide a copy of the proposed order to the Smiths or their counsel. The Smiths agreed to the stipulation, and the district court signed the order of dismissal. The stipulation did not address costs or attorney fees. However, the proposed order, signed by the district court, denied costs and attorney fees to both parties.

The Smiths moved the district court to reconsider the order of dismissal, arguing that they did not agree to any proposed order of dismissal denying them costs and attorney fees, nor did they agree to waive any rights they had to any such costs and attorney fees in the stipulation. The Smiths also filed a memorandum of costs. After oral argument, the district court denied the motion to reconsider. The Smiths appeal challenging the district court's order granting Straub's motion to amend her complaint, the order of dismissal, and the order denying reconsideration of the dismissal.¹

II.

ANALYSIS

A. Motion for Reconsideration

In reaching its decision, the district court held that, because the Smiths did not pray for costs and attorney fees in their answer, they could not be awarded costs and attorney fees. The district court also held that an alternative reason for denying the motion for reconsideration was the Smiths' failure to set forth any rule allowing them to file a motion to reconsider.

1. Costs and attorney fees

The district court's ruling placed great emphasis on the Smiths' failure to request costs and attorney fees in their pro se answer to the original complaint. The district court also noted that the Smiths had a second opportunity to make such a request, when represented by counsel, after Straub filed her amended complaint. The Smiths, however, failed to file any additional responsive pleading. The district court reasoned that the Smiths' failure to request costs and attorney fees in their responsive pleading, pursuant to I.R.C.P. 8(a)(1), barred the district court

from granting the motion to reconsider and awarding costs and attorney fees. The Smiths argue that, under I.R.C.P. 54(e)(4), they were not required to request costs and attorney fees in their responsive pleadings in order to be awarded such costs and attorney fees as the prevailing party.

Idaho Rule of Civil Procedure (8)(a)(1)² requires, among other things, that a pleading that presents a “claim for relief” include a “demand for judgment for the relief” to which the claimant deems himself or herself entitled. A claim seeks affirmative relief, whereas a defense seeks to diminish or defeat the relief sought by a claim. *Idaho Dept. of Labor v. Sunset Marts, Inc.*, 140 Idaho 207, 209, 91 P.3d 1111, 1113 (2004). Therefore, the requirements of Rule 8(a)(1) apply to complaints and like pleadings that present claims for relief, not responsive pleadings that set forth defenses and denials to claims for relief. *See id.*

Idaho Rule of Civil Procedure 54(e)(4) establishes the general rule that any party in a civil action need not assert a claim for attorney fees in any pleading. *See Eighteen Mile Ranch L.L.C. v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 720, 117 P.3d 130, 134 (2005). Although the preferred practice may be to include the request for costs and attorney fees in the pleadings, failure to include such a request is not a requirement to sustain a claim for costs and attorney fees in any matter other than where judgment is obtained by default. *See Eighteen Mile Ranch*, 141 Idaho at 721, 117 P.3d at 135.

The Smiths’ answer to Straub’s complaint was not a “claim for relief” and, therefore, Rule 8(a)(1) does not dictate its requirements. The general rule established in Rule 54(e)(4) is controlling in these circumstances. The Smiths’ failure to request costs and attorney fees in their answer does not bar them from being awarded such costs and attorney fees so long as they meet the requirements of any other statutes and rules necessary to sustain the award. Therefore, the

¹ Based on the ultimate conclusion here, we do not address the issue of the district court granting Straub’s motion to amend her complaint.

² Idaho Rule of Civil Procedure (8)(a)(1) provides:

General Rules of Pleading--Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) if the court be of limited jurisdiction, a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short and plain statement of the claim showing that the pleader is entitled to relief,

district court erred in denying the Smiths' motion to reconsider on the basis of their omission of a request for costs and attorney fees in their answer.

2. Rule Basis

The district court's alternative reason for denying the Smiths' motion to reconsider was the Smiths' failure to set forth any rule supporting the motion. On appeal, the Smiths argue that their motion for reconsideration indicated the basis for bringing the motion.

Idaho Civil Rule of Procedure 7(b)(1) states that all motions and other papers before the court "shall be made in writing, shall state with particularity the grounds therefor including the number of the applicable civil rule, if any, under which it is filed, and shall set forth the relief or order sought." In practice, this requires the moving party substantially set forth the basis upon which the motion is sought and the relief the party is seeking from the court. *Nanney v. Linella, Inc.*, 130 Idaho 477, 481-82, 943 P.2d 67, 71-72 (Ct. App. 1997); *Mason v. Tucker and Assocs.*, 125 Idaho 429, 432, 871 P.2d 846, 849 (Ct. App. 1994). So long as this is done in such a fashion so as to preclude the opposing party from reasonably claiming prejudice or surprise, the requirement is met. *Mason*, 125 Idaho at 432, 871 P.2d at 849.

In *Fournier v. Fournier*, 125 Idaho 789, 874 P.2d 600 (Ct. App. 1994), a party's motion provided no rule, authority or clear grounds either for the motion itself or the relief sought. The moving party therefore made it impossible for the opposing party to determine what basis the motion was made on. *Id.* at 791, 874 P.2d at 602. The motion was insufficient because, as this Court noted, I.C.R.P. 7(b)(1) requires that some notice be provided to the nonmoving party of the grounds upon which a motion is based. *Id.* The circumstances in *Fournier* however are not the same as those in the instant case.

Contrary to the determination of the district court, the Smiths did cite a rule for their motion. The record here demonstrates that the Smiths' motion for reconsideration stated the grounds for the motion and specifically cited to I.R.C.P. 11(a). We note that, even though the Smiths' motion does not elaborate which section of Rule 11(a) they rely upon, it appears to be Rule 11(a)(2)(B) which applies to reconsideration of interlocutory orders or orders made after final judgment. However, a dismissal is a final judgment, and a motion to modify, amend or

and (3) a demand for judgment for the relief to which he deems himself entitled.

otherwise reconsider a dismissal is properly brought before the district court under I.R.C.P. 59(e). *See Ross v. State*, 141 Idaho 670, 672, 115 P.3d 761, 763 (Ct. App. 2005). Rule 59(e) requires that a motion to amend or modify must be filed within fourteen days of the judgment's entry. *See id.*

The Smiths' motion to the district court substantially set forth argument and requested relief consistent with a Rule 59(e) motion to modify or amend the order of dismissal and the motion was filed within fourteen days. The Smiths' motion provided sufficient grounds to inform Straub of the basis of the motion and she could not claim prejudice or surprise. Although the rule cited by the Smiths may have been the incorrect rule under the circumstances, it is not necessarily fatal to their motion as they did specify a sufficient basis for the motion and the relief sought. Therefore, the district court erred in denying the Smiths' motion to reconsider on the grounds that the Smiths provided no rule or basis for the motion at all.

B. Stipulated Dismissal with Prejudice

The Smiths signed a stipulation to the entry of an order dismissing Straub's action against them with prejudice. Straub argues that this stipulated dismissal with prejudice acts as an implicit waiver of costs and attorney fees.

Idaho Rules of Civil Procedure 41(a)(1) provides:

Subject to the provisions of Rule 23(e), of Rule 73, and of any statute of the state of Idaho an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

A stipulation to dismiss an action made pursuant to I.R.C.P. 41(a)(1) is considered a voluntary dismissal by all parties. *Wilhelm v. Idaho State Bar*, 140 Idaho 30, 36, 89 P.3d 870, 876 (2004). A voluntary dismissal under Rule 41(a)(1) is a matter of right and does not require the consent or permission of the district court so long as a notice of dismissal or a signed stipulation to dismiss is filed with the district court. *State, Dept. of Health and Welfare v. Housel*, 140 Idaho 96, 102, 90 P.3d 321, 327 (2004); *Rohr v. Rohr*, 118 Idaho 689, 692, 800 P.2d

Relief in the alternative or of several different types may be demanded.

85, 88 (1990). In contrast, a plaintiff who seeks dismissal after the defendant has served an answer or filed a motion for summary judgment and where the defendant will not stipulate to a dismissal, may only obtain a dismissal through an order of the court. I.R.C.P. 41(a)(2).

A stipulated dismissal with prejudice, entered before trial, acts as a final judgment just as if the parties had proceeded to trial. *See Kawai Farms, Inc. v. Longstreet*, 121 Idaho 610, 613-14, 826 P.2d 1322, 1325-26 (1992) (where the Idaho Supreme Court determined the doctrine of *res judicata* applied to a voluntary dismissal with prejudice just as if it were a final judgment). Collateral issues that do not go to the merits of an action, including requests for costs and attorney fees, can be determined by the district court after termination or dismissal of the action. *Inland Group of Companies, Inc. v. Obendorff*, 131 Idaho 473, 475, 959 P.2d 454, 456 (1998); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394 (1990) (final judgment does not eliminate a court's jurisdiction to hear collateral issues).

Here, the Smiths signed a stipulation to the entry of an order granting Straub's motion to dismiss the action with prejudice. Though the stipulation was to the entry of an order by the district court, because the Smiths stipulated to the dismissal, an order of the court was not necessary and therefore the stipulation has the same effect as a voluntary dismissal pursuant to Rule 41(a)(1). The filed stipulation to the order of dismissal acts as a final adjudication of Straub's cause of action against the Smiths. The issue of costs and attorney fees, however, is a collateral issue that does not go to the merits of Straub's action. Consequently, the Smiths could file a separate motion seeking costs and attorney fees after stipulating to the dismissal.

The order entered by the district court, drafted by Straub but never reviewed by the Smiths, was not only for the stipulated dismissal, but was also for the waiver of costs and attorney fees as part of the dismissal. This order effectively eliminated the possibility of an award of costs and attorney fees to the Smiths without an opportunity for them to be heard on the matter. Because the order of dismissal included a waiver that the Smiths were unaware of and did not stipulate to, the Smiths properly sought modification or amendment of the order pursuant to the civil rules. Therefore, the Smiths are not barred from seeking costs and attorney fees.

C. Attorney Fees on Appeal

The Smiths also request attorney fees as the prevailing party in this appeal. Attorney fees may be awarded to a prevailing party on appeal pursuant to I.C. § 12-120(3) in civil actions involving several types of commercial transactions. Here, the Smiths are not a prevailing party

in the action as this Court has not determined whether they are entitled to relief pursuant to their motion for reconsideration or if they are entitled to costs and attorney fees in the action below. We only conclude that the order denying the Smiths' motion for reconsideration was decided on erroneous grounds and must be reversed and remanded for further proceedings. However, if on remand the district court awards the Smiths costs and attorney fees in the underlying action, the district court may also award reasonable attorney fees to the Smiths for this appeal.

III. CONCLUSION

The district court applied the incorrect civil rule in concluding the Smiths' motion for reconsideration must be denied. The district court also erred in finding the Smiths failed to set forth any rule or basis for their motion and, even though the rule set forth was incorrect, it is not fatal to the Smiths' motion. Therefore, this case is remanded to the district court to determine whether the Smiths are entitled to an award of costs and attorney fees and on what basis. Accordingly, the district court's order denying the motion for reconsideration is reversed and remanded for proceedings consistent with this opinion. Costs, but not attorney fees, are awarded to the Smiths on appeal.

Judge LANSING and Judge GUTIERREZ, **CONCUR.**